

VIRGINIA BOARD OF DENTISTRY
Regulatory-Legislative Committee
November 20, 2009 Agenda
Department of Health Professions
Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center
Richmond, Virginia 23233

<u>TIME</u>		<u>PAGE</u>
10:30 a.m.	Call to Order —Myra Howard, Chair	
	Public Comment	
	Approval of Minutes - August 21, 2009	1 - 4
	Status Report on Regulatory Actions:	5
	<ul style="list-style-type: none">• Dental Assistant Regulations• Mobile Dental Clinics Regulations• Recovery of Disciplinary Costs	
	Develop Regulatory Language for Recovery of Disciplinary Costs	6 - 22
	Periodic Review of Regulations	
	<ul style="list-style-type: none">• Chart on Part V, Unprofessional Conduct	23 - 30
	Schedule Next Meeting	
Adjourn		

**VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
August 21, 2009**

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 9:00 A.M. on August 21, 2009 in Board Room 1, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Myra Howard
Robert B. Hall, Jr., D.D.S.

OTHER BOARD MEMBERS PRESENT: None

STAFF PRESENT: Sandra K. Reen, Executive Director
Huong Vu, Administrative Assistant
Alan Heaberlin, Deputy Executive Director

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

ESTABLISHMENT OF A QUORUM: All members of the Committee were present.

PUBLIC COMMENT: **Michele Satterlund** of the Virginia Association of Nurse Anesthetists commented that on page 7 of the Draft Guidance Document on Administering and Monitoring, item number 13, the term "certified anesthesia assistant" should be changed to "dental anesthesia assistant" because anesthesia assistants are not licensed in Virginia. Dr. Levin thanked Ms. Satterlund for her input and stated that the Committee will take it into consideration.

Nancy Daniel of J. Sargeant Reynolds Community College asked the Committee once again to require work experience in restorative dentistry for dental assistant II certification. She stated that it is critical to success. In regards to the Chart on Permissible Delegation of Duties, Ms. Daniel commented that it does not mention the placing of bonding for composite. She asked that the Committee may want to add bonding for composite. Dr. Levin thanked Ms. Daniel for her suggestion and stated that the Committee will take it into consideration.

MINUTES:

Dr. Levin asked if the Committee had reviewed the minutes of the April 22, 2009 meeting. Dr. Hall asked for clarification on top of page 3 of the minutes where it stated "Ms. Yeatts asked if the Committee would like to double the hours as the minimum requirement for clinical experience." Dr. Hall wanted to know if this meant doubling the hours of laboratory training. Ms. Yeatts stated yes, that page 20 of the agenda is the listing of the hours of laboratory training adopted by the Committee. Ms. Reen clarified that the wording should be "to double the number of laboratory hours as the minimum requirements for clinical experience." Dr. Hall moved to accept the amended April 22, 2009 minutes. The motion was seconded and passed.

**STATUS REPORT ON
REGULATORY
ACTIONS:**

Dr. Levin asked Ms. Yeatts to walk the Committee through the status of regulatory actions.

Dental Assistant Regulations – Ms. Yeatts reported that the dental assistant regulation is at the proposed stage. Ms. Reen asked that the Committee to advance an amendment to the Dental Assistant Regulations to add (1) "performing pulp capping procedure" to 18VAC60-20-230(c) for delegation to only DAs II and (2) separate the "use of non-epinephrine retraction cord" from number 3 to list as a distinct duty. She explained that the amendment reflects decisions of the Committee which were not carried through in drafting the proposed regulations to take to the Board in September. Dr. Hall moved to recommend the amendment to regulations to the Board. The motion was seconded and passed.

Mobile Dental Clinics Regulations – Ms. Yeatts reported these emergency regulations are at the Secretary's office for review.

Recovery of Disciplinary Costs – Ms. Yeatts reported this action is at the Governor's office for review.

Ms. Reen added that the Regulatory-Legislative Committee is still in the internal process of Regulatory Review.

**CHART ON
PERMISSIBLE
DELEGATION OF
DUTIES:**

Dr. Levin commented that the Committee has read and has taken into consideration all of the public comments when developing this chart.

Ms. Reen added that what dental assistants are currently doing needs to be reflected on this chart. She advised the Committee to make sure that these duties are clear and accurate before

making changes. She also advised the Committee to send the chart out to the public and interested parties for input. Dr. Levin agreed.

After discussion, the following changes were made to the chart:

- Restorative and Adjuvant Services – adding apply primer and bonding
- Anesthesia Services – item #1 should state “Apply topical Schedule VI anesthetic”
- Hygiene – item #6 is stricken
- Bleaching – item # 4 is a **Yes** for Dental Assistants I and Dental Assistants II under Indirect Supervision

Dr. Hall moved to approve the amended chart. The motion was seconded and passed.

**DRAFT GUIDANCE
DOCUMENT ON
ADMINISTERING AND
MONITORING:**

Ms. Reen noted that this draft of the guidance document represents what the law currently permits. She went on to say that it reflects the discussions held with the Executive Directors of the Board of Nursing, Board of Pharmacy, Board of Medicine, and the DHP Chief Deputy and Mr. Casway. She also explained that this guidance has been requested by licensees to explain what monitoring and administering meant, what dental assistant can do, and what nurses can do in dental offices. Ms. Reen stated that this is still a discussion draft.

After much discussion, the following changes were made:
Administration

6a – “a dentist not qualified to administer conscious sedation **shall only** use the services of an anesthesiologist in **dental office** to administer conscious sedation. **In an Outpatient Surgery Center or hospital, a dentist not qualified to administer conscious sedation shall use an anesthesiologist or certified registered nurse anesthetist to administer conscious sedation**”

7a – “A dentist not qualified to administer deep sedation/general anesthesia **shall only** use the services of an anesthesiologist in **a dental office** to administer deep sedation/general anesthesia. **In an Outpatient Surgery Center or hospital, a dentist not qualified to administer conscious sedation shall use an anesthesiologist or certified registered nurse anesthetist to administer deep sedation/general anesthesia**”

No other change was made. Ms. Pace moved to take the guidance document to the September Board meeting as amended. The motion was seconded and passed.

**PERIODIC REVIEW OF
REGULATIONS:**

Mark-up of Parts I, II and III – Ms. Reen noted that the review process is still internal with the Committee and that Part IV to VII are still pending. She stated that comments from individual reviews by Committee members were used to identify possible changes as identified in this document. She stated that this document reflects what the Committee has done and where the Committee wants to go. She advised Committee members to review it as they work with the remaining parts to address internal consistency.

Chart on Part IV, Anesthesia, Sedation and Analgesia – Ms. Reen presented that chart the members will use to identify possible changes to this section. She asked Committee members to think about any additional concerns or considerations that need to be added while reviewing this part. Dr. Levin said that he will start the process and then the rest of the Committee members will follow alphabetically.

NEXT MEETING:

Dr. Levin asked about dates for scheduling the next meeting. It was agreed the Committee would meet again at 9:00 am on Friday, October 23, 2009.

ADJOURNMENT:

Dr. Levin adjourned the meeting at 11:30 a.m.

Jeffrey Levin, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date

Status of Board of Dentistry Regulatory Actions

Chapter	Action / Stage Information	
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Registration of mobile clinics
	Stage:	Emergency/NOIRA - Register Date: 11/23/09 Comment on NOIRA – 11/23 to 12/23/09 Effective date of emergency regulations - 1/8/2010
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Recovery of disciplinary costs
	Stage:	NOIRA - Register Date: 10/26/09 Comment on NOIRA – 10/26 to 11/25/09
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Registration and practice of dental assistants
	Stage:	Proposed - At Governor's Office

2009 SESSION

INTRODUCED

098066528

HOUSE BILL NO. 2058

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 27 of Title 54.1 a section numbered 54.1-2708.2, relating to recovering costs of disciplinary action by the Board of Dentistry.

Patron—Hamilton

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

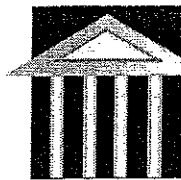
1. That the Code of Virginia is amended by adding in Article 1 of Chapter 27 of Title 54.1 a section numbered 54.1-2708.2 as follows:

§ 54.1-2708.2. Recovery of monitoring costs.

The Board may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of \$5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.

INTRODUCED

HB2058



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Recovery of administrative costs in disciplinary actions
Date this document prepared	5/28/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to initiate rules for recovery of administrative costs relating to the investigation and monitoring of a licensee disciplined by the Board of Dentistry. Legislation passed by the 2009 General Assembly (HB2058 – Delegate Hamilton) provides statutory authorization for imposition of such costs, and the goal of the amendments is to establish the regulatory framework for which costs may be assessed, how those costs may be determined, the process for assessment of costs and conditions under which the Board may choose to waive the imposition of costs.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

Specific regulatory authority for the Board of Dentistry is found in Chapter 89 of the 2009 Acts of the Assembly:

§ 54.1-2708.2. Recovery of monitoring costs.

The Board may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of \$5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Enforcement activities constitute the largest expenditure for the board, although only a small percentage of licensees undergo investigation, and an even smaller percentage are found to be in violation of statutes and regulations governing their professions. Therefore, it is equitable to

assess at least a portion of enforcement and monitoring costs to those who are the cause of the expenditure. By recovering a portion of its enforcement costs, the Board will be better able to meet its obligation to investigate every complaint it receives and to more efficiently and effectively resolve cases related to patient care. The Board will have the additional resources necessary to adequately investigate reports of misconduct to make the practice of dentistry and dental hygiene safer for patients in Virginia.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The statute is specific about some aspects of the authority to recover “reasonable administrative costs associated with investigating and monitoring” a licensee. The recovery of costs will only be implemented if a licensee has had disciplinary action imposed. It will not affect those licensees: 1) who are investigated by the Department, but for whom no probable cause is found to indicate a violation may have occurred; 2) who have a disciplinary proceeding, but for whom no violation is found and no discipline imposed; or 3) who have matters resolved through a confidential consent agreement or an advisory letter.

Rather than setting specific fees or dollar amounts in regulation, the amendments will provide a process for determination of both the investigative and monitoring costs, as specified in the Code section. At the end of each fiscal year, regulations will require a calculation of the average hourly cost for enforcement that is chargeable to the work of the Board of Dentistry. The Enforcement Division of the Department tracks the number of hours an investigator spends on a case, so that number could be multiplied by the hourly cost to determine the specific costs relating to the investigation of the case against a specific respondent. In addition, the Board would assess any costs relating to hiring expert witnesses and the reports generated by such witnesses. While not inclusive of all related administrative costs, a fee based on the actual number of hours and the hourly cost of an investigation would be reasonable and not arbitrary or selectively punitive. The imposition of the recovery cost would become part of the order from an informal or formal proceeding or part of a consent order agreed to by the parties.

The monitoring costs would be calculated based on the terms and conditions imposed and the length of time the licensee is to be monitored. As with the enforcement costs, the Board would annually calculate the average costs of monitoring certain terms, such as the acquisition of continuing education in an area of practice. If the licensee is to be monitored beyond one year, the monitoring cost would be imposed for each of those years. A guidance document would be adopted annually setting out the average investigative and monitoring cost (for the various terms and conditions to be monitored), so the licensees (and their attorneys, if applicable) would have knowledge of the recovery of costs, if disciplinary action is imposed. Since the costs would be incorporated in the order, the respondent would have the option to accept the order, request a formal hearing following an informal, or appeal an order from a formal hearing to a circuit court.

As specified in statute, the total of the recovery of costs could not exceed \$5,000. However, the regulations will reference current fees for inspection of dental offices and returned checks as fees not subject to the recovery maximum. Additionally, the Board may seek to recover the collection costs for delinquent fines and fees.

Finally, the Board intends to set in regulation a limited number of reasons for which all or part of the costs may be waived. The Board would be required to set out in the findings of fact in the disciplinary order the specific reasons for such a waiver. Regulations may provide that a total or partial waiver could be granted if the imposition of costs would create a substantial undue hardship on the licensee, or if it would be unjust to the public to assess fees, or if the collection of such fees does not appear to be feasible.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The only viable alternative for the Board of Dentistry is to continually increase application and renewal fees for all licensees to cover rising administrative costs for discipline and enforcement. The Board has already been notified that a significant deficit in the next biennia is projected and documented, and it will need to consider appropriate regulatory action as mandated by law. While the recovery of some of those costs from the licensees who generate the need for investigation and disciplinary action will not replace future need for increased fees, it may help to mitigate against large fee increases for all licensees in the future.

The statutory authority for recovery of disciplinary costs is already held by the boards at the Department of Professional and Occupational Regulation and the Board of Accountancy. Therefore, the Board will consult with its sister agencies to learn from their experience with a recovery program. Additionally, there are other states in which the Board of Dentistry has such authority, so those states' statutes and regulations will be reviewed. In the state of Washington, legislation recently passed that authorizes the Board to seek reasonable reimbursement of disciplinary proceedings up to \$10,000. If the licensee seeks judicial review of the disciplinary action and does not receive a "substantial element of relief," the law requires that the trial or appellate court shall impose \$25,000 at each level of judicial review. Such authorization is not included in the Virginia statute.

To the extent possible, the intent of the regulation would be to set out a process by which fees could be calculated, assessed, collected or waived in a manner that would be reasonable and equitable to all parties.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by posting comment on the Regulatory Townhall at www.townhall.virginia.gov or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, (804) 527-4434 (fax) or elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held after the Board has adopted proposed regulations. Notice of the hearing may be found on the Virginia Regulatory Town Hall website at www.townhall.virginia.gov and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

SUBSTITUTE SENATE BILL 5752

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators
Marr, Pflug, Hobbs, and Keiser)

READ FIRST TIME 02/10/09.

1 AN ACT Relating to cost recovery in disciplinary proceedings
2 involving dentists; and adding a new section to chapter 18.32 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. A new section is added to chapter 18.32 RCW
5 to read as follows:

6 (1) In any disciplinary case pertaining to a dentist where there is
7 a contested hearing, if the commission or its hearing panel makes the
8 finding requisite for, and imposes upon the dentist, a disciplinary
9 sanction or fine under RCW 18.130.160, unless it determines to waive
10 the assessment of a hearing fee, it shall assess against the licensee
11 a partial recovery of the state's hearing expenses as follows:

12 (a) The partial recovery hearing fee must be:

13 (i) An amount equal to six thousand dollars for each full hearing
14 day in the proceeding and one-half of that amount for any partial
15 hearing day; and

16 (ii) A partial recovery of investigative and hearing preparation
17 expenses in an amount as found to be reasonable reimbursement under the
18 circumstances but no more than ten thousand dollars;

1 (b) Substantiation of investigative and hearing preparation
2 expenses for purposes of (a) of this subsection may be by affidavit or
3 declaration descriptive of efforts expended, which are reviewable in
4 the hearing as would be a cost bill;

5 (c) The commission or its hearing panel may waive the partial
6 recovery hearing fee if it determines the assessment of the fee (i)
7 would create substantial undue hardship for the dentist, or (ii) in all
8 the circumstances of the case, including the nature of the charges
9 alleged, it would be manifestly unjust to assess the fee.
10 Consideration of the waiver must be applied for and considered during
11 the hearing itself. This may be in advance of the decision related to
12 RCW 18.130.160.

13 (2) If the dentist seeks judicial review of the disciplinary action
14 and there was a partial recovery hearing fee assessed, then unless the
15 license holder achieves a substantial element of relief, the reviewing
16 trial court or appellate court shall further impose a partial cost
17 recovery fee in the amount of twenty-five thousand dollars at the
18 superior court level, twenty-five thousand dollars at the court of
19 appeals level, and twenty-five thousand dollars at the supreme court
20 level. Application for waiver may be made to the court at each level
21 and must be considered by the court under the standards stated in
22 subsection (1)(c) of this section.

23 (3) In any disciplinary case pertaining to a dentist where the case
24 is resolved by agreement prior to completion of a contested hearing,
25 the commission shall assess against the dentist a partial recovery of
26 investigative and hearing preparation expenses in an amount as found to
27 be reasonable reimbursement in the circumstances but no more than ten
28 thousand dollars, unless it determines to waive this fee under the
29 standards stated in subsection (1)(c) of this section.

30 (4) In any stipulated informal disposition of allegations
31 pertaining to a dentist as contemplated under RCW 18.130.172, the
32 potential dollar limit of reimbursement of investigative and processing
33 costs may not exceed two thousand dollars per allegation.

34 (5) Should the dentist fail to pay any agreed reimbursement or
35 ordered cost recovery under the statute, the commission may seek
36 collection of the amount in the same manner as enforcement of a fine
37 under RCW 18.130.165.

1 (6) All fee recoveries and reimbursements under this statute must
2 be deposited to the health professions account for the portion of it
3 allocated to the commission. The fee recoveries shall be fully
4 credited in reduction of actual or projected expenditures used to
5 determine dentist license renewal fees.

6 (7) The authority of the commission under this section is in
7 addition to all of its authorities under RCW 18.130.160, elsewhere in
8 chapter 18.130 RCW, or in this chapter.

Passed by the Senate March 3, 2009.

Passed by the House April 13, 2009.

Approved by the Governor April 22, 2009.

Filed in Office of Secretary of State April 23, 2009.

FINAL BILL REPORT

SSB 5752

C 177 L 09

Synopsis as Enacted

Brief Description: Regarding cost recovery in disciplinary proceedings involving dentists.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Marr, Pflug, Hobbs and Keiser).

Senate Committee on Health & Long-Term Care

House Committee on Health Care & Wellness

House Committee on Health & Human Services Appropriations

Background: The Dental Quality Assurance Commission (DQAC) was established to regulate the competency and quality of professional dentist health care providers by establishing, monitoring, and enforcing qualification for licensure, continuing education, standards of practice, competency, and discipline. The administrative expenses of every health care profession, including dentists, are paid for by that profession's licensing fees. Disciplinary action accounts for approximately 85 percent of the administrative expenses of the commission. Expenses incurred for disciplinary activities include investigations and legal analysis, board member time, outside experts, Attorney General advice and prosecution, records collection and reproduction, staff attorneys, health law judges, and hearing room rentals. Licensing fees are determined by the number of members in the licensed profession and the level and complexity of disciplinary activity.

Summary: When DQAC sanctions or fines a dentist in a disciplinary hearing, the commission must assess a partial recovery hearing fee in the amount of \$6,000 for each full day hearing. It must also assess a partial recovery of investigative and hearing preparation expenses up to \$10,000. The commission can waive the hearing fee if its imposition would cause an undue hardship for the dentist or it would be manifestly unjust. In the event a dentist pursues judicial review at the superior court, appellate court, or Supreme Court level, a partial cost recovery fee of \$25,000 must be assessed at each level of review. The reviewing court is permitted to waive the hearing fee for undue hardship or manifest injustice. A partial recovery fee is limited to \$2,000 if the disciplinary action is resolved through a stipulated informal disposition.

All fees are to be deposited in that portion of the health professions account allocated to the commission.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Multiple Agency Fiscal Note Summary

Bill Number: 5752 SB	Title: Dentists
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Estimated Cash Receipts

Agency Name	2009-11		2011-13		2013-15	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Health	0	285,000	0	520,000	0	520,000
Total \$	0	285,000	0	520,000	0	520,000

Local Gov. Courts *						
Local Gov. Other **						
Local Gov. Total						

Estimated Expenditures

Agency Name	2009-11			2011-13			2013-15		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Health	1.0	0	282,000	.9	0	190,000	.9	0	190,000
Total	1.0	\$0	\$282,000	0.9	\$0	\$190,000	0.9	\$0	\$190,000

Local Gov. Courts *	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Other **									
Local Gov. Total									

Prepared by: Nick Lutes, OFM	Phone: 360-902-0570	Date Published: Final
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Judicial Impact Fiscal Note

Bill Number: 5752 SB	Title: Dentists	Agency: 055-Admin Office of the Courts
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2010	FY 2011	2009-11	2011-13	2013-15
Counties					
Cities					
Total \$					

Estimated Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

Legislative Contact	Dominic Kehoe	Phone: 360-786-7183	Date: 03/27/2009
Agency Preparation:	Julia Appel	Phone: (360) 705-5229	Date: 03/31/2009
Agency Approval:	Dirk Marler	Phone: 360-705-5211	Date: 03/31/2009
OFM Review:	Cheri Keller	Phone: 360-902-0563	Date: 03/31/2009

Form FN (Rev 1/00)

1

Request # -1

Bill # 5752 SB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

The amendment to the substitute bill has no impact on the following analysis.

This bill relates to costs for prosecuting disciplinary actions against dentists. If a dentist appeals the results of an administrative disciplinary hearing to the superior court, and after that to the court of appeals or supreme court, section 1 (2) specifies the amount of money the courts must impose on the dentist to reimburse the state for its additional litigation costs.

II. B - Cash Receipts Impact

II. C - Expenditures

According to DOH, dental hearing decisions are already appealed to superior court at a high rate, so additional filings are not expected. It is possible that more actions might be appealed to the appellate courts and possibly to the supreme court, but it is assumed that the fiscal impact will be less than \$50,000 annually.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

Individual State Agency Fiscal Note

Bill Number: 5752 SB	Title: Dentists	Agency: 303-Department of Health
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2010	FY 2011	2009-11	2011-13	2013-15
Health Professions Account-State 02G-1	25,000	260,000	285,000	520,000	520,000
Total \$	25,000	260,000	285,000	520,000	520,000

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	1.1	0.9	1.0	0.9	0.9
Fund					
Health Professions Account-State 02G-1	187,000	95,000	282,000	190,000	190,000
Total \$	187,000	95,000	282,000	190,000	190,000

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Dominic Kehoe	Phone: 360-786-7183	Date: 03/27/2009
Agency Preparation:	Danny Howard	Phone: (360) 236-4625	Date: 03/31/2009
Agency Approval:	Patty Steele	Phone: 360-236-4530	Date: 03/31/2009
OFM Review:	Nick Lutes	Phone: 360-902-0570	Date: 04/03/2009

Request # 09-174-1

Bill # 5752 SB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1: This bill adds a new section to Chapter 18.32 RCW (Dentistry) to recover costs in disciplinary proceedings for dentists. The bill provides for the Dental Quality Assurance Commission to recover a hearing fee from the respondent in those instances when a sanction or fine is levied against the respondent as a result of the hearing. It also imposes recovery fees on appeals and agreed orders, and increases the maximum recovery fee for stipulation to informal dispositions (STIDS). The fees may be waived if they would cause substantial undue hardship for the dentist, or appear manifestly unjust based on the circumstances of the case.

In any disciplinary case pertaining to a dentist where there is a contested hearing and a disciplinary sanction or fine is imposed on the dentist, a partial recovery of the state’s hearing expenses can be recovered. Up to \$6,000 for each full hearing day and \$3,000 for any partial hearing day may be recovered. The state will also recover partial expenses of investigative and hearing preparation in the amount found to be reasonable under the circumstances but no more \$10,000. The commission may waive the partial recovery hearing fee if it determines the assessment of the fee would create substantial undue hardship for the dentist or if in all circumstances of the case would be manifestly unjust to assess the fine.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Assumptions: The Dental Quality Assurance Commission (DQAC) will use the full financial authority granted with this bill. Due to anticipated appellate litigation, the only revenue expected to be received in fiscal year (FY) 2010 will be for the STIDS. The Department of Health (DOH), Division of Health Systems Quality Assurance (HSQA) is estimating that one quarter of the number of cases (9), which in the past would have resulted in agreed orders (36), will instead go to hearing due to the respondents’ reluctance to settle and pay the increased agreed order cost recovery. This will increase the number of hearings to 12 each year. It is assumed that the appellate courts will impose \$25,000 per level of appeal and will not grant more waivers than DQAC. It is also assumed that the addition of a \$25,000 cost recovery for an unsuccessful appeal will decrease the number of appeals taken by respondents, based on HSQA’s experience with attorneys at the appellate level.

HSQA currently obtains fines on agreed orders and cost recovery on STIDS. No cost recovery is currently collected for hearings or appeals. For agreed orders, HSQA currently collects up to \$5,000 per violation. For STIDS, HSQA currently collects up to \$1,000 per allegation.

Section 1 - Increased cost recovery authority estimates:

Beginning in FY 2010, an additional \$25,000 will be collected each year as a result of STIDS, based on data from the 2008 UDA report (25 STIDs per year X \$1,000).

Beginning in FY 2011, an additional \$135,000 will be collected each year as a result of nine additional hearings, based

on data from the 2008 UDA report (9 hearings of 2.5 days each at \$6,000 per day, and \$3,000 for a half day). An additional \$100,000 will be collected each year as a result of four additional appeals and a 90 percent affirmation rate, based on data from the 2008 UDA report (33% of 12 total orders appealed X \$25,000 each).

This bill allows a practitioner to seek a reduction in the amount of the recovery, and because HSQA has not collected fees based on costs in cases other than STIDs, the impact is difficult to predict and is therefore not a part of this cost estimate.

Current law requires that this profession be fully self-supporting and sufficient revenue be collected through fee increases to fund 02G expenditures in the Health Professions Account. Nothing in this legislation creates a new fee. Nor does it authorize increasing fees for the programmatic changes contained in the bill. Depending on the impact of this and other new legislation that may also affect this profession, fee adjustments will be required in the future.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Assumptions: DQAC will use the full financial authority granted to them under the bill. HSQA is estimating that some respondents who would have settled at the agreed order stage of the disciplinary process will instead go to hearing. For fiscal note purposes, HSQA is estimating one quarter of the number of past agreed orders from the 2008 UDA report will go to hearing due to respondents' reluctance to settle and pay the increased agreed order cost recovery. Estimates are based solely on data for the dental profession. Based on the 2008 UDA report, all DQAC cases that went to hearing were later appealed.

Section 1(1): For fiscal note purposes, HSQA is estimating nine additional cases per year will go to hearing due to respondents' reluctance to settle and pay the increased agreed order cost recovery. Hearing times will be extended due to increased testimony and argument about the amount of costs to be assessed to the respondent and hardship waivers. The number of post-hearing motions for reconsideration and/or motions to modify will increase because respondents will dispute the investigative and hearing preparation expenses and/or the determination by the commission on the hardship waiver and seek to strengthen their record for appeal.

HSQA is estimating at least an additional day for the hearing. Hearings require a panel of three members of the DQAC to be in attendance along with a court reporter. There will be staff time to substantiate costs of investigative and hearing preparation and to create a new billing and time tracking change in the HSQA Integrated Licensing and Regulatory System database. Costs in FY 2010 will include staff and associated costs, Commission member time, court reporter services, and travel. Costs are estimated to be 0.7 FTE and \$104,000. Starting in FY 2011, ongoing costs are estimated to be 0.6 FTE and \$94,000 each year.

Section 1(2): HSQA is estimating that nine additional cases per year will require judicial review of the disciplinary action by the superior court or appellate court. To be sent to the appellate court and the Attorney General's Office, the case file will need to be copied and indexed. Attorney General time will be needed to address new arguments which will be raised about the cost recovery requirements in this bill and the legal standards for waiving cost recovery. Costs in FY 2010 will include staff and associated costs, and Attorney General time. Costs are estimated to be \$83,000. Starting in FY 2011, ongoing costs are estimated to be \$1,000 each year.

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In FY 2010, expenditures also include salary, benefits and related staff costs for a 0.2 FTE Health Services Consultant (HSC) 1 and a 0.2 FTE Fiscal Analyst (FA) 2 to assist with the increased administrative workload. In FY 2011 and ongoing, these expenditures are expected to decrease to 0.1 FTE HSC and 0.1 FTE FA.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	1.1	0.9	1.0	0.9	0.9
A-Salaries and Wages	64,000	52,000	116,000	104,000	104,000
B-Employee Benefits	16,000	12,000	28,000	24,000	24,000
E-Goods and Services	97,000	26,000	123,000	52,000	52,000
G-Travel	4,000	4,000	8,000	8,000	8,000
J-Capital Outlays	5,000		5,000		
M-Inter Agency/Fund Transfers					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	1,000	1,000	2,000	2,000	2,000
9-					
Total:	\$187,000	\$95,000	\$282,000	\$190,000	\$190,000

III. B - Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2010	FY 2011	2009-11	2011-13	2013-15
Board Member FTE @ 250 per day		0.1	0.1	0.1	0.1	0.1
Board Member FTE @ 50 per day						
Fiscal Analyst 2	44,928	0.2	0.1	0.2	0.1	0.1
Health Services Consultant 1	43,836	0.2	0.1	0.2	0.1	0.1
HEALTH SERVICES CONSULTANT	61,632	0.0	0.0	0.0	0.0	0.0
3						
HEARINGS EXAMINER 3	78,900	0.3	0.3	0.3	0.3	0.3
HEARINGS SCHEDULER	36,756	0.1	0.1	0.1	0.1	0.1
INFORMATION TECHNOLOGY	71,496	0.0		0.0		
SPECIALIST 4						
LEGAL SECRETARY 2	42,588	0.2	0.2	0.2	0.2	0.2
WMS03	87,096	0.0	0.0	0.0	0.0	0.0
Total FTE's	467,232	1.1	0.9	1.0	0.9	0.9

III. C - Expenditures By Program (optional)

Program	FY 2010	FY 2011	2009-11	2011-13	2013-15
Health Systems Quality Assurance (060)	166,000	84,000	250,000	168,000	168,000
Administration (090)	21,000	11,000	32,000	22,000	22,000
Total \$	187,000	95,000	282,000	190,000	190,000

Part IV: Capital Budget Impact

None.

Part V. UnProfessional Conduct.		Rename
<p>§54.1-2400.15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.</p> <p>§ 54.1-2706. Revocation or suspension; other sanctions. The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:</p> <ol style="list-style-type: none"> 1. Fraud, deceit or misrepresentation in obtaining a license; 2. The conviction of any felony or the conviction of any crime involving moral turpitude; 3. Use of alcohol or drugs to the extent that such use renders him unsafe to practice dentistry or dental hygiene; 4. Any unprofessional conduct likely to defraud or to deceive the public or patients; 5. Intentional or negligent conduct in the practice of dentistry or dental hygiene which causes or is likely to cause injury to a patient or patients; 6. Employing or assisting persons whom he knew or had reason to believe were unlicensed to practice dentistry or dental hygiene; 7. Publishing or causing to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising; 	18VAC60-20-150 to 18VAC60-20-160. [Repealed]	<p>Add a new section – Standard of Care Protect patients from harm. Practice within the scope of the accredited clinical education you have completed. Keep knowledge and skills regarding the bounds of accepted treatment current in each area of dentistry practiced. Incorporate new techniques, technologies, medicines and chemical compounds only for the purpose of evaluating, diagnosing and treating the diseases, disorders and conditions taught in your accredited clinical education. Continuing education courses shall not be relied on to expand your scope of practice. Treat according to the patient's desires to the extent that such treatment is within the bounds of accepted treatment and only after the patient has been given a treatment recommendation and an explanation of the acceptable alternatives. Consult with or refer patients to practitioners with special knowledge, skills and experience in order to safeguard and advance the welfare of a patient. Be familiar with the signs of abuse and neglect and report suspected cases to the proper authorities, consistent with state law. Move from 170 and restate affirmatively:</p> <ul style="list-style-type: none"> • Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene; • Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist as authorized by this chapter; • Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and • Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195. <p>Maintain a safe and sanitary practice. Comply with OSHA, CDC and Department of Health regulations. Contain or isolate pets.</p> <p>Add a new section – Professional Boundaries A patient becomes a patient of record when he is seated in the dental chair and examination and diagnosis of the oral cavity is initiated. Only treat based on a bona-fide practitioner-patient relationship. Only prescribe controlled substances based on a bona-fide practitioner-patient</p>

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<p>8. Mental or physical incompetence to practice his profession with safety to his patients and the public;</p> <p>9. Violating, assisting, or inducing others to violate any provision of this chapter or any Board regulation;</p> <p>10. Conducting his practice in a manner contrary to the standards of ethics of dentistry or dental hygiene;</p> <p>11. Practicing or causing others to practice in a manner as to be a danger to the health and welfare of his patients or to the public;</p> <p>12. Practicing outside the scope of the dentist's or dental hygienist's education, training, and experience;</p> <p>13. Performing a procedure subject to certification without such valid certification required by the Board pursuant to § 54.1-2709.1 and Board regulations; however, procedures performed pursuant to the provisions of subdivision 5 of § 54.1-2712 as part of an American Dental Association accredited residency program shall not require such certification;</p> <p>14. The revocation, suspension or restriction of a license to practice dentistry or dental hygiene in another state, possession or territory of the United States or foreign country; or</p> <p>15. The violation of any provision of a state or federal law or regulation relating to manufacturing, distributing, dispensing or administering drugs.</p> <p>§ 54.1-2708. Disciplinary action discretion. Except in the case of a monetary penalty, the Board may take disciplinary action notwithstanding any action pending before or consummated before any court or any criminal penalty which has been or may be imposed.</p> <p>§ 54.1-2716. Practicing in a commercial or mercantile establishment.</p> <p>It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the</p>	<p>18VAC60-20-170. Acts constituting unprofessional conduct.</p> <p>The following practices shall constitute unprofessional conduct within the meaning of §54.1-2706 of the Code of Virginia:</p> <p>1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;</p>	<p>relationship within the criteria set forth in §54.1-3303 of the Code of Virginia. Do not engage at any time during the course of the practitioner - patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive;</p> <p>Only prescribe, dispense or administer controlled substances in good faith for medicinal or therapeutic purposes within the scope of the practice of dentistry or the scope of the practice of dental hygiene and consistent with the provisions of Part IV of these regulations and the Drug Control Act, §54.1-3400 et seq. of the Code of Virginia.</p> <p>A licensee shall not terminate the practitioner-patient relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner. Consider specifying 30 days.</p> <p>Add a new section – Patient Information and Records</p> <p>Comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient information and records.</p> <p>A licensee shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.</p> <p>Records may not be withheld because the patient has an outstanding financial obligation to the dentist.</p> <p>A reasonable cost-based fee may be charged to include the cost of supplies and labor for copying, and postage if mailing is requested and preparation of an explanation or summary as agreed to by the requestor.</p> <p>Post information to inform patients concerning the time frame for record retention and destruction.</p> <p>Destroy records in a manner that protects patient confidentiality, such as by incineration or shredding.</p> <p>When closing, selling or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice and providing records.</p> <p>Records shall not be abandoned or otherwise left in the care of someone who is not licensed except that upon the death of a licensee a trustee or executor of the estate may safeguard the records until they are transferred to a licensee, are sent to the patients of record or are destroyed in keeping with §32.1-127.1:03 of the Code of Virginia.</p> <p>Rename 170 as Billing and Financial Transactions</p> <p>Delete as unnecessary</p>
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provisions of this section shall be guilty of a Class 1 misdemeanor.
For the purposes of this section, the term “commercial or mercantile establishment” means a business enterprise engaged in the selling of commodities or services unrelated to the practice

§ 54.1-2718. Practicing under firm or assumed name.

A. No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own.

This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist’s name.

2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.

3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner’s name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

4. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

§ 54.1-2728. Grounds for revocation or suspension. The

2. Performing services or offering products for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient, payer and or the public the treatment provided, the date of service or the materials, methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

18VAC60-20-180. Advertising.

The owner’s name must be conspicuously displayed in any advertisement of a dental practice or any advertisement offering dental services.

A. Practice limitation. A general dentist who limits his practice to a dental specialty area shall state in conjunction with his name that he is a general dentist providing only certain services, e.g., orthodontic services.

B. Fee disclosures. Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products which, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts. Discount offers for a dental service are permissible for advertising only when the non-discounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the

Add highlighted language

Add highlighted language

Move to Standard of Care section

Move to Standard of Care section

Move to Standard of Care section

Move to Standard of Care section

Add:

- Maintain a clear and accurate listing of customary fees and consistently charge the listed fees for the service or treatment provided regardless of payer then note adjustments.
- Do not enter into fee splitting or rebate arrangements with other health professionals. How about with advertisers?
- Promptly refund monies owed to patients or third party payers.

Add new A.

Add highlighted language?

Highlighted for consideration in requiring a listing of fees above.

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<p>Board may revoke or suspend the license of any dental hygienist for any of the causes set forth in § 54.1-2706, insofar as applicable to the practice of dental hygiene.</p> <p>§ 54.1-2403. Certain advertising prohibited. No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.</p> <p>§ 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.</p> <p>A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:</p> <p>1. Any person licensed to practice medicine or any of the healing arts;</p> <p>..... The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the Board. Any person required to make the report pursuant to this subsection shall disclose all information that is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department, which is the agency of jurisdiction, any information, records, or reports that document the basis for the report. All persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.</p> <p>G. Any person required to file a report pursuant to this section who fails to do so within 72 hours of his first</p>	<p>discounted fee.</p> <p>D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.</p> <p>E. Routine dental services. Advertising of fees pursuant to subdivision F 3 of this section is limited to procedures which are determined by the board to be routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in the Current Dental Terminology (CDT-2007/2008), which is hereby adopted and incorporated by reference, edition in effect at the time the advertisement was placed.</p> <p>F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code of Virginia:</p> <ol style="list-style-type: none">1. Publishing an advertisement which contains a material misrepresentation or omission of facts;2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;3. Publishing an advertisement which fails to include the information and disclaimers required by this section;4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995 2001), or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board ADA, or other such organization recognized by the board; and5. A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents that he provides services in areas other than his specialty is considered to be practicing general dentistry. <p>G. Signage. Advertisements, including but not limited to Signage containing at the practice location is not deemed to be advertising and may contain only a trade name, a descriptions of the type of dentistry practiced or a specific geographic locator.</p>	<p>Consider changing to 12 months.</p> <p>Change so that licensee cannot be penalized for using the provisions in a more recent publication.</p> <p>Change to latest publication date Edit for clarity</p> <p>Add for clarification</p> <p>Should language be added to address practices advertising as "cosmetic" "family" "sedation" "aesthetic" "professional" dentistry?</p> <p>Board referred - consider adding provisions on the conduct of clinical examinations on requiring a dentist to be present during a dental hygiene</p>
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<p>suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.</p> <p>§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.</p> <p>A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:</p> <ol style="list-style-type: none"> 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine; 2. Any mental health services provider as defined in § 54.1-2400.1; 3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith; 4. Any guardian or conservator of an adult; 5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity; 6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and 7. Any law-enforcement officer. <p>B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to</p>		<p>exam. Board counsel has advised that taking exams does not constitute the practice of dentistry.</p> <p>Committee referred - Are dentists responsible for assuring that employees get Hepatitis Vaccinations?</p>
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report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and, if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the

abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may

<p>order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.</p> <p>J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.</p> <p>K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.</p>		
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Part VI. Direction and Delegation Of Duties.

<p>§ 54.1-2700. Definitions. As used in this chapter, unless the context requires a different meaning:</p> <p>"Dentist" means a person who has been awarded a degree in and is licensed to practice dentistry;</p> <p>"Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body;</p> <p>§ 54.1-2711. Practice of dentistry. Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents or contiguous structures, or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes.</p>	<p>18VAC60-20-190. Nondelegable duties; dentists.</p> <p>Only licensed dentists shall perform the following duties:</p> <ol style="list-style-type: none"> 1. Final diagnosis and treatment planning; 2. Performing surgical or cutting procedures on hard or soft tissue; 3. Prescribing or parenterally administering drugs or medicaments; 4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth; 5. Operation of high speed rotary instruments in the mouth; 6. Performing pulp capping procedures; 7. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F; 8. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth; 9. Final positioning and attachment of orthodontic bonds and bands; 10. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures; 11. Final cementation of crowns and bridges; and 12. Placement of retraction cord. <p>18VAC60-20-195. Radiation certification.</p> <p>No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, (iii) satisfactorily</p>	
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